

## REMARKS

Applicant is diligently working to obtain a newly-executed Declaration and Power of Attorney document from the inventors. Several of the inventors no longer work for the assignee and the assignee does not have their forwarding addresses. Assignee is attempting to locate these inventors to have a new Declaration and Power of Attorney document in compliance with the Examiner's requirement.

The specification has been amended in accordance with the Examiner's requirement. Entry is requested.

Claim 1 has been amended to clarify that only a portion of the gases pass through the filter, the sensor being exposed to the filtered portion of gases only. As discussed on page 7, lines 28-31, on page 8, line 4, and shown in FIGS. 1 and 9, the filter material is arranged at a side of the tubing so the flow of gases passes through the tubing mostly unfiltered. It is only the flow of gases to be sensed by the sensor that are filtered.

Claim 3 has been amended to add clarity by adding the word "releasably". As described on page 7 lines 25-27, the cartridge or open tubular section is attached to the humidifier and the conduit via bayonet fittings or other fittings known in the art; such fittings are known to be releasable.

Claim 6 has been amended to be dependent on claim 3 and 4. Claim 6 corresponds with claims 5 and 6 of the published application 2006/0118113. The housing has been included to correct the lack of antecedent basis.

Claim 17 has been amended to depend from claim 1.

Claim 26 has been amended to depend from claim 17.

Claim 31 has been amended to in accordance with the amendments to claim 1.

Claims 1, 3, 4, 6, 8, 11, 13 and 15-17 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by European Patent Application No. 0 567 158 to Murray. Claims 1, 3, 4, 6, 8, 10-17 and 26-36 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over United States Patent No. 6,272,933 to Gradon et al. in view of United States Patent No. 6,068,609 to Ott et al. Reconsideration and withdrawal of these rejections is requested.

None of the cited prior art disclose the invention as claimed in amended claim 1. The system of Murray includes filter material 18 which is formed into an envelope 16 for holding water. A flow of gases is directed over the surface of the envelope 16 and around the edges of the envelope to humidify the gases. The flow of gases may not be filtered; gases passing through the apparatus can do so without being filtered. For example, the embodiment of Figure 2 includes an additional distribution chamber to ensure that the gases which have passed over the water compartment 16 and including vapour from that compartment have mixed thoroughly in order to provide a humidified gas. The temperature of this humidified gas is sensed by the temperature sensor. Mixing is necessary to ensure uniform humidity. The gases sensed by the temperature sensor therefore includes gases that have passed over the envelope 16 and gases that have not.

The apparatus of Otto includes a filter (130, 131, 132) through which all of the gases flow must pass. The sensor is exposed to the filtered gases only. However, all gases passing through the apparatus are filtered. Amended claim 1 requires a significant portion of the flow of gases to flow from the humidifier to the conduit without passing through the filter material.

The apparatus of Otto is for use in surgery. The purpose of the filter is to protect the patient. The filter of the present invention is to protect the sensor. The apparatus of Otto is therefore fundamentally different to the present invention.

None of the prior art disclose or suggest the system of the present application. The system of the present application includes the following benefits:

- The flow of gases generally pass from the humidifier to the conduit without being filtered, resulting in effectively zero pressure drop past the sensor and filter material.
- The sensor is protected from wetside contaminants, while still providing effective measurement of the gases condition.
- The expensive sensor may be reused between patients while inexpensive items can be disposed of.

Therefore, Applicant submits that the claims as amended are allowable. Reconsideration and allowance is requested.

A Request for Continued Examination is submitted concurrently herewith.

In view of the above Amendments and Remarks, Applicant respectfully submits that the claims of the application are allowable over the rejections of the Examiner. Should the Examiner have any questions regarding this Amendment, the Examiner is invited to contact one of the undersigned attorneys at (312) 704-1890.

Respectfully submitted,

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